IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CASE NO.: **Crl.A.No.395-DB of 1999**

DATE OF DECISION: November 22, 2007

BIJENDER S/O BALWANT ...APPELLANT

VERSUS

THE STATE OF HARYANA ...RESPONDENT

CORAM: HON'BLE MR. JUSTICE ASHUTOSH MOHUNTA.
HON'BLE MR. JUSTICE MOHINDER PAL.

PRESENT: MR. N.K. SANGHI, ADVOCATE FOR THE APPELLANT.
MR. S.K. HOODA, SR.DAG, HARYANA.

ASHUTOSH MOHUNTA, J.

The appellant Bijender has filed this appeal against the judgement of Sessions Judge, Rohtak dated 6.8.1999, vide which he was convicted under Section 302 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.500/- and in default the appellant was ordered to further undergo R.I. for 4 months.

The prosecution story in a nutshell as gathered from the statement Ex.PD of Kashmiri Lal PW7 is that on 21.4.1995, at about 5.00 p.m. Nihal Chand came to the house of Kashmiri Lal PW-7 in his Maruti car driven by Lalit Mohan PW8. Nihal Chand wanted to go to his fields and he asked Kashmiri Lal to accompany him. All of them left in the Maruti car of Nihal Chand for the fields of Nihal Chand which was situated in the revenue estate of village Marodhi. When they reached near the Bhiwani Octroi post at Rohtak one Sunil met who asked them to give him a lift as he was to go

to village Patwapur which falls on the way of village Marodhi. Sunil was given the lift by Nihal Chand in his car. All the persons reached village Marodhi at about 6.30 p.m. and reaching there the appellant Bijender, farm labourer met him. Nihal Chand asked Bijender as to why he had not prepared the 'Dol' to which the appellant replied that there was no hurry and he would prepare it on the next day. Thereafter, Nihal Chand rebuked Bijender and told him that he would not be paid his wages. On saying this Nihal Chand turned back to go to his car. The rebuking by Nihal Chand infuriated the appellant who picked a danda and hit Nihal Chand on the head and said in a huff that why he would not be paid the wages for the day. Nihal Chand who was an old man of 80 years fell down unconscious. He was immediately taken to PGIMS Rohtak where Dr. Neeraj Aggarwal PW9, Registrar Surgery alongwith Dr. Diwan, a Neuro-Surgeon, operated upon him. The Doctor sent a ruqa to the Incharge Police Post PGIMS Rohtak regarding the injuries suffered by Nihal Chand. Krishan Kumar PW3 moved an application Ex.PC before the Doctor concerned whether the patient was fit to make a statement or not. The Doctor opined that the patient was not in a position to give a statement. A case under Section 307 IPC was registered against the appellant Bijender. Nihal Chand succumbed to his injuries on 25.4.1995 at 8.25 p.m. and thereafter the offence under Section 302 IPC was added.

In order to prove its case the prosecution examined PW7 Kashmiri Lal and PW8 Lalit Mohan, Driver who were eye witnesses to the occurrence. The prosecution also examined Dr. Neeraj Aggarwal PW9 alongwith other official witnesses.

The accused in his statement under Section 313 Cr.P.C. stated

that as he was demanding his wages from the son of the deceased, therefore, he has been falsely implicated in the case. It was further stated by the accused that Nihal Chand sustained injuries by falling.

The trial Court by placing reliance on the testimony of PW-7 Kasmiri Lal who had witnessed the incident and the testimony of PW-8 Lalit Mohan, driver who was also present at the spot when Nihal Chand was hit on the head by the appellant which was corroborated by the deposition of PW9 Dr. Neeraj Aggarwal came to the conclusion that Nihal Chand died as a result of receiving injury on the head with a Danda/lathi from the accused Bijender and convicted the appellant under Section 302 IPC and sentenced him to undergo imprisonment for life.

We have heard the counsel for the accused as well as the State at length.

Kashmiri Lal PW-7 has stated that on 21.4.1995, Nihal Chand had scolded the accused as to why he has not prepared the 'Dol' and also told him that he would not be paid his wages. This infuriated the appellant who gave a danda blow on the head of Nihal Chand who fell down unconscious and subsequently died on 25.4.1995. The testimony of this witness has not been shaken in the cross examination. PW8 Lalit Mohan who was the driver of Nihal Chand has also stated that the deceased was hit on the head with a lathi by the accused Bijender. The testimonies of both these witnesses are consistent.

The ocular version given by PW7 Kashmiri Lal and PW8 Lalit Mohan, driver has been dully corroborated by the statement of PW9 Dr. Neeraj Aggarwal who was posted as Registrar, Surgery Unit V PGIMS, Rohtak. He stated that the deceased was admitted with head injury with the

diagnosis of Acute Subdural Haematoma. The deceased was operated on the same day, i.e. 21.4.1995, along with Dr. Diwan, Neuro-Surgeon posted at PGIMS, Rohtak. It was stated that the injury suffered by the Nihal Chand was sufficient to cause his death in the normal course of nature. A perusal of the aforementioned statements clearly shows that the occurrence was witnessed by PW7 Kashmiri Lal and PW8 Lalit Mohan, driver who had accompanied Nihal Chand to his fields in village Marodhi. Both the witnesses have given a graphic and consistent account of the manner in which the occurrence took place. Both the eye witnesses stated that Nihal Chand had rebuked the accused for not preparing the 'Dol' and stated that the accused would not be paid his wages which enraged him and he hit the deceased with a danda on his head. The testimonies of these PWs have been duly corroborated by PW9 Dr. Neeraj Aggarwal who has stated that the injury suffered by Nihal Chand was sufficient to cause his death.

Apart from the above, the accused had fled away from the spot and had absconded. He was declared a proclaimed offender. The accused was apprehended after a period of 1 year and 9 months of the occurrence. From the aforementioned facts, we are of the considered opinion that Nihal Chand died as a result of danda blow on his head by the accused-appellant Bijender.

Mr. Sanghi, counsel for the appellant has vehemently contended that it was a sudden occurrence and a solitary lathi blow was inflicted by the appellant in the heat of the moment. It has been argued that the appellant had not preplaned to give the fatal blow to the deceased. It is submitted that the appellant gave the blow only when he was rebuked by the deceased Nihal Chand that as to why he has not prepared the 'Dol' and he

would not be paid wages for the day and due to that the appellant inflicted the injury on the head of the deceased. It is further contended that the blow was inflicted by lathi which is not a deadly weapon and there was no intention on part of the appellant to cause the death of the deceased and hence conviction of the accused be converted to the one under Section 304, Part-II. Counsel for the appellant has placed reliance on *Pularu* Vs. *State of M.P.*, reported as AIR 1993 Supreme Court 1487. Learned counsel has also placed reliance on *Jagrup Singh* vs. *The State of Haryana*, reported as AIR 1981 Supreme Court 1552.

Counsel for the State has, however, submitted that as lathi blow was inflicted with considerable force, therefore, it has to be inferred that the appellant intended to cause such bodily injury as was sufficient to cause his death. It is contended that as the lathi blow was inflicted on Nihal Chand who was an old man of 80 years, therefore, the appellant had the intention to inflict the injury which was sufficient to cause death.

A perusal of the statement of PW-7 Kashmiri Lal as well as the statement of Lalit Mohan, Driver PW-8 shows that the appellant inflicted only one blow with a lathi on the head of the deceased Nihal Chand. There was no other injury inflicted by the appellant. There was also no pre-meditation on the part of the appellant to inflict the blow to the deceased. The appellant assaulted the deceased in the heat of the moment and after giving the solitary blow did not give any further blows. The appellant had no intention to cause death to the deceased. In these circumstances, the accused cannot be convicted by invoking Clause (1) or (3) of Section 300 IPC, therefore, the offence committed by the appellant would be one amounting to culpable homicide i.e., punishment under Section 304, Part II

IPC. The case of the appellant is also squarely covered by the ratio of the judgements in *Pularu's case* (supra) in which the accused had inflicted a single blow by the tabbal, i.e. a blunt agricultural equipment, which is not a deadly weapon and the Hon'ble Apex Court set aside the conviction under Section 302 IPC and converted the same to the one under Section 304, Part (II) IPC. Similarly, in *Jagrup Singh's case* (supra), the accused had given a blow on the deceased with the blunt side of gandhala. The assault took place in the heat of the moment and without any pre-meditation and in this case also the Hon'ble Apex Court held that Clause Thirdly of Section 300 IPC would not be applicable and set aside the conviction under Section 302 IPC and converted the same to Section 304, Part(II), IPC.

In view of the aforementioned discussion, we set aside the conviction of the appellant under Section 302 IPC and sentence of imprisonment for life awarded therein and instead, we convict the appellant under Section 304, Part(II), IPC and sentence him to undergo R.I. for seven years. The appeal is partly allowed to the extent indicated above.

(ASHUTOSH MOHUNTA)
JUDGE

November 22, 2007
Gulati

(MOHINDER PAL)
JUDGE